In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 663

JOHN WOODS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 8-12) is not yet reported. The opinion of the district court (Pet. 13-21) is reported at 246 F. Supp. 712.

JURISDICTION

The judgment of the court of appeals was entered on August 17, 1966. A petition for rehearing was denied on September 15, 1966. The petition for

a writ of certiorari was filed on October 12, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was an abuse of discretion by the trial court in the conduct of the voir dire.

STATEMENT

After a jury trial in the United States District Court for the Western District of Pennsylvania, petitioner was convicted on four counts of an indictment charging the falsification of documents for the purpose of obtaining loans affecting the action of the Federal Housing Administration in violation of 18 U.S.C. 1010. He was sentenced to imprisonment for 10 years subject to modification after a study in accord with 18 U.S.C. 4208(b) (A. App. 3a).[1] The court of appeals affirmed.

On voir dire (See G. App. 1b-10b), petitioner's counsel requested the right to question the jurors individually to determine their family status, their occupations and those of the immediate members of their families "as well as certain other questions which the Court has approved but only for general question rather than individual question." The request was concurred in by government counsel who noted, however, that the jury lists, which had been furnished the defense, contained information as to

[1] "A. App." refers to the Appellant's Appendix below and "G. App." to the government's appendix.

the jurors' occupations and other matters. The court observed that the practice of individual interrogation had been viewed with some disfavor and that in this case he would follow the practice of having only those jurors who gave affirmative answers to general questions subjected to specific follow-up inquiries submitted by counsel. Defense counsel voiced no objection.

Thereafter the array of jurors was instructed to listen carefully to certain questions, and each juror was told to raise his hand should his answer to any question be affirmative. This procedure was followed throughout with the clerk first asking general questions concerning acquaintance with the parties or their counsel, involvement in law suits, dealings with F.H.A. or building contractors, and employment of the jurors and members of their families by law enforcement or other government agencies, building construction firms, lending, or financial agencies. Each juror who raised his hand was asked to stand, identify himself and give details as to such employment, involvement, or association. Each of five[2] jurors who indicated that they had obtained F.H.A. loans was asked whether the loan was currently outstanding and, at the request of defense counsel, whether any of the loans were home improvement loans. Two jurors answered the latter question affirmatively and

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[2] Of these five, one was discharged for cause on the ground that his brother was employed by the F.B.I.; the others were discharged on peremptory challenges—one by the government, one by petitioner's counsel, and two by counsel for a co-defendant (see Pet. 19).

were again asked to identify themselves. Counsel submitted no further inquiries in this regard. The court asked the defense (who had challenged an Internal Revenue employee and a brother of an F.B.I. employee for cause) whether the fact that certain jurors had existing F.H.A. home improvement loans would have any bearing. Defense counsel replied (G. App. 9b):

> I don't think there is any basis to challenge them for cause. They can go either way here. You don't know what to do in that kind of situation. They may have had pleasant experiences and may have had unpleasant experiences.

Both sides thereafter indicated satisfaction with the jury (G. App. 10b).

ARGUMENT

The court below properly held that petitioner was not denied any rights by the trial court's conduct of the voir dire. The court decided not to permit counsel to interrogate the prospective jurors but rather to have counsel supplement the court's general examination by submitting further inquiries. The method adopted is expressly authorized by the Federal Rules of Criminal Procedure[3] and in no way operated to

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[3] Rule 24(a) of the Federal Rules of Criminal Procedure provides:

> EXAMINATION. The court may permit the defendant or his attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or his attorney and the

the prejudice of petitioner. This record does not support the contention that defense counsel was prevented from having the prospective jurors examined as to their family status or occupation or the occupation of immediate family members or any other matter. Rather the transcript[4] amply supports the conclusion of the court below (Pet. 11) that there "was not a single occasion where appellant offered a specific question and was denied the right to have it put to the array or a member thereof." While the court of appeals (Pet. 12) was critical of the trial judge's decision to have his questions, and those of counsel, propounded to the jury by his clerk rather than stating the questions himself, it had no doubt that the trial judge was not required to permit counsel to interrogate the jurors. Petitioner does not suggest that he was prejudiced by the trial judge's use of his clerk in this manner.

It is well established that the trial court had broad discretion with respect to examination on voir dire. See *Dennis* v. *United States*, 339 U.S. 162, 168. Here there is no showing that that discretion has been abused.

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attorney for the government to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.

[4] For a more complete picture of the proceedings, we are lodging with the Clerk of this Court a copy of the transcript.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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